THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 11854 of 2001

Oral order:

On the ground that the disciplinary proceedings and the criminal proceedings arise out of the same incident, and as such, until the disposal of the criminal proceedings on the file of the
II Additional Judicial First Class Magistrate, Rajahmundry, the respondent should be restrained from proceeding with the disciplinary proceedings, the petitioner filed the writ petition.

The petitioner, prior to the filing of this writ petition, had filed writ petition in W.P. No. 3751 of 2000 claiming full wages for the period he was kept under suspension on the ground that the respondents did not complete the disciplinary proceedings within one year. This Court, by order dated 08.06.2002, allowed the said writ petition. Assailing the said order, the respondents preferred writ appeal in W.A. No. 679 of 2003. A Division Bench of this Court, by judgment dated 18.06.2003, disposed the writ appeal as well as the writ petition, but instead of mentioning the number of the writ petition, against which the writ appeal came to be filed, the number of the present writ petition was mentioned in the judgment, and in fact, the present writ petition was not disposed of, and the cause in the present writ petition still survives.

The main contention of the petitioner in this writ petition is that as criminal case is pending against him, the parallel departmental enquiry is not allowed to be continued, which would cause prejudice to the criminal proceedings. The same cannot be accepted inasmuch as the apex Court in ***LALIT POPLI Vs. CANARA BANK AND OTHERS***[1], held that the criminal and departmental proceedings are entirely different and the standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. The relevant paragraph reads as under:

> "It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and

> the rules governing the enquiry and trial are conceptually different. (See ***STATE OF RAJASTHAN Vs. B.K. MEENA***[2]) In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct."

Further, the apex Court in ***AJIT KUMAR NAG Vs. GENERAL MANAGER (PJ), INDIAN OIL CORPN. LTD***[3], held that the two proceedings, criminal and departmental, are entirely different and they operate in different fields and have different objectives. The relevant portion reads as under:

> "……..The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability……"

In view of the above settled position of law, pendency of criminal case is not a bar to conduct a departmental enquiry. The writ petition is devoid of merit and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

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N.V. RAMANA, J.

Date: 21st March, 2006.

KSR/MAS